

No. 9(1)82-6Lab/4132.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the disputes between the workmen and the management of M/s Remington Rand of India Ltd., Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

References Nos. 408, 409, 410, 411 and 412 of 1980

between

S/SHRI PARAS SINGH, DAN SINGH, DIWAN SINGH, ANAND SINGH,
KRISHANA BAHADUR, WORKMEN AND THE RESPONDENT-
MANAGEMENT OF M/S. REMINGTON RAND OF INDIA LTD.
TED, MATHURA ROAD, FARIDABAD

Present :

Shri H. R. Dua for the workmen.
Shri J. S. Saroha for the respondent-management.

AWARD

This reference No. 408 to 412 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/57-80/44926, dated the 21st August, 1980, ID/FD-57-80/44932, dated the 21st August, 1980, ID/FD/57-80/44926, dated the 21st August, 1980, ID/FD/57-80/44920, dated 21st August, 1980 and ID/FD/57-80/44914, dated the 21st August, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Paras Singh, Dan Singh, Shri Diwan Singh, Anand Singh and Shri Kishan Bahadur and the management of M/s Remington Rand of India, Limited, Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of S/Shri Paras Singh, Dan Singh, Diwan Singh, Anand Singh and Kishan Bahadur was justified and in order ?
If not, to what relief are they entitled ?

After receiving these references, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workmen according to the demand notices and rejoinders is that they joined the services of the respondent in the month of June, 1977 and were illegally terminated on 13th March, 1980 without any notice or enquiry. So the orders are wrong and the workmen are entitled for the reinstatement with full back wages and continuity of service.

According to the written statement the case of the respondent is that the claimant were never in the employment of the respondent-management. The canteen in the factory had been run by the Contractor and claimants were the employees employed by the contractor on the terms and conditions mutually accepted between the parties. There is no record of the workmen in the factory and there exist no dispute between the claimant and the respondent. Shri S. C. Khurana contractor was the employer who is also contractor in M/s Gedore Tools, India, NIT, Faridabad. The contractor came in the contract of the respondent after signing the contract deed and in clauses 9 and 12 it is very clear that the employment of the canteen was his duty. So the references are bad in law and may be rejected.

On the pleadings of the parties, following issues were framed :—

1. Whether the relationship of employer and employee exist between the parties ?
If so, to what effect ?

2. As per reference.

3. Relief.

After framing of issues it was ordered that issue No. I be treated as preliminary issue and decided first. These references were consolidated on 3rd February, 1981 on the request of the parties and the evidence was taken in reference No. 408 of 1980. My findings on preliminary issues is as under :—

Issue No. 1:—

The representative of the respondent-management argued that as stated by the respondent in his written statement that the claimants are the employees of the contractor Shri S.C. Khurana, —*vied* Exhibit M-1 which is signed by him on 4th October, 1979 and it is also admitted by him as witness MW-2 and in clause Nos. 9 and No. 12 it is very clear that contractor will employ necessary staff for the canteen and all liabilities both present and future in regard to employees and other issues will be of the contractor and in clause 12 the contractor was responsible for complying with all provisions of the Factory Act and Payment of Wages Act. The contractor submitted the monthly bills to the respondent which are Exhibit M-2 to M-5. The respondent gave a notice for termination of the canteen contract on which Exhibit M-6 a letter was sent to the contractor for all such things. The contractor gave the letter Exhibit M-7 to M-10 shows that the claimants were under control of the contractor and not under the respondent. The contractor paid the wages and supervise the work at his own level. There was no responsibility of the respondent with these workmen. After termination of the contract of Shri S. C. Khurana, the other contractor came in his place to run the canteen and he has employed necessary staff in place of the claimant, without joining the real contractor in this case, the implementation of the award became in-effective and un-forceable and creat difficult position because some other contractor has employed other workmen who are working in the canteen. He further argued as stated by the respondent witness MW-1 Shri A. S. Sethi, personal Manager of the respondent and Shri G. R. Batra, Time Keeper as MW-3, the claimants were the employees of the contractor and there is no record with the respondent to prove their existence as employee of the respondent. He further argued that the respondent brought the relevant record in the Court and there is no mention of workman regarding the existence of these claimants in the record and the workmen representative has failed to call any such record from the respondent factory to prove that the workmen were the employees of the respondent. He further argued that we call the contractor as MW-1, who has stated and admitted the signature on Exhibit M-1 to M-5 including the contract deed and has stated in his statement that the concerned workmen were not employed by him. They were already working in the factory. In his cross-examination he has also shark the responsibility because he knew this fact that if he admit their employment and wages paid then he has to suffer for their relief and so he denied as their employee which is false and the witness cannot be believed. He further argued that there are five workmen in the consolidation references and only two workmen have come to depose before this Court and they have stated in their cross-examination that the workmen in the factory used to get the attendance card and this claimant never received from the respondent and used to get lesser wages then the minimum wages. The claimant has failed to produce any record or oral evidence of the file of the Court that they are workmen of the respondent. In these circumstances, it is clear that the workmen were not employees of the respondent.

The representative of the workmen argued that the workmen were employed in the respondent factory from the month of June, 1977 and was taken by the Personal Officer of the respondent who has come as MW-1 and working under their control and the salary was paid by the company and working in the canteen as ordered by the respondent. The workmen were employed by the respondent and working in the factory as per orders of

the respondent and terminated without giving any notice enquiry so they are the employees of the respondent. He further argued that the respondent witness Shri S. C. Khurana contractor has stated in his statement that the workmen were present in the canteen when he took over the charge of the canteen. They are the employees of the respondent when he left the canteen. The claimants are working in the canteen and they are the employees of the respondent. When the witness of the respondent states that the claimants are the employees of the respondent then it is very clear that they are the employees of the respondent and not of the contractor. They called the contractor. He made the statement against the respondent. The respondent should have produced some record before the witness MW-1 Shri S.K. Khurana that they are the employees of the contractor and not of the respondent, in which the respondent has failed to put any record before their witness to rebut that the claimants are not the employees of the respondent. When the claimants statements corroborated by the respondent witness, it is clear that the claimants are the employees of the respondent and not of the contractor. The respondent withhold the relevant record of the claimants if these were the contractor's employees then they should have produced the record of the contractor his bills and other documents to prove that the claimants are the employees of the contractor but on the file there is nothing to prove that they are the employees of the contractor except the contract deed which he has received from the respondent mentioning nothing except bills of the canteen, which does not prove that they are the employees of the contractor. Further more it was the duty of the principal employer to safeguard the interest of the employees of the contractor under the law. The claimants have stated in their statement that they are paid less wages. There is no E.S.I. or P. F. facilities provided to the claimants, which was very essential duty of the principal employer. They cannot be relieved from the responsibility simply saying that the claimants are not the employees of the respondent and they are employees of the contractor. The Contractor took the contract of the canteen and left it without any responsibility and he has stated before the Court that they are not employees of the contractor but of the respondent which may be believed.

After hearing the arguments of both the sides and going through the file I am of the view that the statements of the respondent witness MW-1 Shri S. K. Khurana contractor corroborated the statement of the claimants clears the position of the case. The respondent produced the witness in the Court and if he states the truth then it must be believed. So I believe the statement of the respondent witness MW-1 and the statement of the claimants that the claimants are the employees of the respondent and decided the issue in favour of the workmen and against the respondent and the workmen have the relation with the respondent.

Issue No. 2—

The respondent has denied in their written statement about the relationship with the claimants and stated that they are the employees of the contractor. After proving the relationship of the claimant with the respondent in my view the respondent can not go beyond their pleadings as stated in their written statement and there is nothing to prove in the witness showing the justification of termination of these workmen. The respondent terminated the services of the claimants presuming that the claimants are the employees of the contractor and did not allowed them on duty without any sufficient cause of termination. So the termination of these workmen are not justified by any way by the respondent and the issue is decided in favour of the workmen and against the respondent. The workmen are entitled for their reinstatement with full back wages and continuity of service.

No orders as to costs. This be read in answer to this reference.

Dated the 9th April, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 838, dated the 19th April, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under sections 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6Lab/4133.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Maharani International Pvt. Ltd., Sector 27-A, Main Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING
OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 322 of 1980

between

SHRI LAL SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S MAHARANI INTERNATIONAL PVT. LTD., SECTOR 27-A,
MAIN MATHURA ROAD, FARIDABAD

Shri R. N. Roy, for the workman.

Shri F. C. Bhatia, for the respondent.

AWARD

This reference No. 322 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana;—*vide* his order No. ID/FD/109-80/39542, dated the 31st July, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Lal Singh, workman and the respondent management of M/s Maharani International Pvt. Ltd., Sector 27-A, Main Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Lal Singh, was justified and in order ?
If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman is that he was appointed in May, 1978 as Gailor master at a salary of Rs 450 per month and was not allowed the duty from 16th May, 1980. The act of the respondent was illegal and the workman is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimant was appointed on 4th June, 1979 on piece rate basis and remained absent from 24th April, 1980 to 4th May, 1980 and automatically lost his lien over his employment under the Model Standing order. The respondent sent a registered letter on 27th April, 1980 to the claimant to resume duty, but no reply received from the claimant. On 4th May, 1980 when he remained absent for more than 10 days and lost his lien over his employment. His name was struck off from the roll according to Model Standing Order and the claimant was informed to collect his dues. The claimant filed one application on 7th May, 1980 stating that his wife was sick whereas he was gainfully employed in some another organisation and

his wife was not sick. The respondent issued him letter on the same day stating therein if your wife is sick then submit medical certificate from the C. M. O. or E. S. I. doctor to confirm the sickness of his wife. After receiving this letter the claimant came on 16th May, 1980 and submitted the medical certificate of his wife issued by Shri Narain Chaudhary from Darbhanga, wherein he declared that his wife was suffering from cough decease. The certificate was issued on 24th April, 1980 and the claimant submitted the certificate on 16th May, 1980 to avoid the checking from C. M. O. at the cost of the respondent because she was not actually sick. On 10th May, 1980 after waiting for 3 days the respondent issued another letter to clear his dues, as his name has already been struck off. The claimant was habitual of harassing and blackmailing the management with anterior motives just to get maximum amount from them.

The respondent raised the preliminary objection in the written statement that the reference is bad on the following grounds. That the claimant filed the demand notice under section 2-A of the Industrial Disputes Act, 1947 against the management of M/s Khanna Tailors, NIT, Faridabad which is pending before the Industrial Tribunal as Reference No. 4/76. He has also filed another demand notice against the management of M/s. Soverin Knit Works, Faridabad which has also pending in this court. The proceedings of the above case pending when the present reference erroneously made by the Haryana Government under the Industrial Disputes Act only one kind of proceedings can be taken for the reinstatement of the same workman seeking relief if a workman is at all aggrieved for the same reason. So the claimant is debarred from serving any demand notice for his reinstatement when the references are pending. It amounts to multiplicity of the proceedings under the same Act and the claimant cannot get the similar relief from both the respondents.

On the pleadings of the parties, following issues were framed:—

- (1) Whether it is a case of voluntary abandonment of service as he absented himself for more than stipulated period ? If so, to what effect ?
- (2) Whether the respondent company closed functioning from 7th September, 1980 ? If so, to what relief ?
- (3) Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (4) Relief ?

Issues Nos. 1 and 2 are ordered to be treated as preliminary issues.

My findings on the issues are as under:—

Issue No. 1:—

The representative of the respondent argued on the issue that the claimant joined the respondent company on 4th June, 1979, — *vide* Ex. M-1 which is a ESI Certificate issued from the ESI department which is a authenticated proof of joining the service of the workman. He was habitual absentee from the work and absented himself from 24th April, 1980. The respondent sent a registered letter Ex. M-2 dated 27th April, 1980 informing him that "after observing your record we have seen that you are habitual absentee from the company without prior approval of the authority despite of the warning issued to you in this regard and even this time you are absent from duty without prior permission from 24th April, 1980. So you are advised of your own interest to resume duty within 24 hours". The claimant did not appear to join his duty even after this letter and letter dated 4th May, 1980 was again sent to claimant through the registered A.D. regarding the striking of name of the claimant from the muster rolls according the Model Standing orders. The claimant was habitual of harassing and blackmailing the management with anterior motives just to get maximum amount from them and this is why a chain of references are pending before

the Court for adjudication. The claimant of his own way came in the factory on 6th May 1980 for collection of his dues. These letters were issued to him in person and he signed the same and received the same. On 7th May he submitted an application stating that his wife was sick so he could not come on duty. The claimant was very cunning person he took the advance of Rs 500 from the respondent on 22nd April, 1980 which is Ex. M-9 and after that date he got himself absented from the duty. The respondent issued a letter Ex. M-3 after receiving the application from the claimant that his wife was sick, the claimant was asked to file a certificate from the C.M.O. or ESI Doctor for the discharge slip from the ESI in case she was admitted in the hospital. Since the applicant absented himself for more than 10 days and lost his lien from service but the respondent was ready to consider his case again if he produces the medical certificate of his wife in support of his explanation, but the claimant did not come in the factory after this letter and came on 6th May, 1980 with a medical certificate of Mr. Narain Chaudhry Dharbhanga which is Ex. M-4. The date of issuance of certificate is 24th April, 1980 and the claimant produced this certificate on 16th May, 1980 in spite of so many registered letters to the claimant and in accordance with the instructions of the respondent. The certificate of this doctor cannot be believed. The workman was covered under the ESI scheme and was a registered workman having the ESI card and as per the instructions of the respondent, — *vide* letter Ex. M-3 he should have given the certificate from ESI from C.M.O. which he failed to do and the certificate produced by the workman was not believed which was submitted very late. There is no application for leave with the respondent and no intimation about the workman with the respondent. He further argued that the disease shown in the certificate was not serious that the workman could be withheld for such disease. The doctor has declared that she was suffering from cough is merely disease. So he could not satisfy the management for the period of absence. In the meanwhile after 7th May, 1980 the respondent sent another registered letter dated 10th May, 1980 which is Ex. M-7 which the claimant cannot wait for such a little matter and for depositing Rs 500 which was taken by the claimant as advance. But the claimant came on 16th May, 1980 with a certificate which was a bogus certificate and to avoid the chance of the respondent to get her examined from the C.M.O. on their own costs. The workman was gainfully employed with some other organisation and filed his demand notice with ulterior motive to harass the management. The respondent witness MW-2 Shri Ram Parkash has appeared who has tailoring shop at Sarojini Nagar, New Delhi who has stated before this court that the claimant Shri Lal Singh came in his service on 16th April, 1980 and worked up to 13th May, 1980 and then left the service of his own. The representative of the workman could not cross-examine and rebut the statement of the witness MW-2 which clears that the claimant was gainfully employed somewhere else and he was absent from duty which was not at all rebutted by the workman at any stage clears the position that the claimant absent himself knowingly and not due to sickness of his wife and the statement of the workman and certificate are all false and baseless which cannot be believed even in the Court. He further argued that the reference is bad because one workman can claim the relief from one in the same period. The award Ex. M-10 between Shri Lal Singh and M/s Khanna Tailors is very clear about this fact and the application filed by the claimant under section 33-C(2) claiming the wages, the copy of the same attached with the award also shows that the claimant is in the habit of leaving the jobs of his own and claiming against the management. In the application he has claimed the wages as Rs 600 per month. When a workman has been reinstated by an award against the one management how he claim the reinstatement from another management.

The representative of the workman argued on this issue that the workman joined the services on 2nd May, 1978 and not on 4th June, 1979 which is a date given in the ESI card and the workman was not absent from duty. He was on leave due to illness of his wife. The workman received the letter of the management, dated 27th April, 1980 for reporting duty but because of his wife seriously ill and he was unable to join his duty within 24 hours and the striking of the name of the workman is not according to the Model Standing Order which are not applicable to the company and which amounts to termination

of the workman and such termination of service is retrenchment as defined under section 2(00) of the Industrial Disputes Act. The workman filed application on 7th May, 1980 for leave due to the sickness of his wife and he was not gainfully employed anywhere. The respondent demanded the certificate for the sickness of the claimant's wife and the same was produced on 16th May, 1980 which was a genuine one and the respondent should have admitted the facts which was not admitted due to the ulterior motive of the respondent and the workman is entitled for the retrenchment compensation as the termination is retrenchment under section 2(00) of the Industrial Disputes Act, 1947.

After hearing the arguments of both the sides and going through the file I am of the view that the respondent has fully proved the case on the file and I agree with the arguments put forward by the respondent. It is correct that there was an award against M/s Khanna Tailors, Faridabad of the claimant which is Ex. M-10 and in this respect the applicant has filed the application under section 33-C(2) of the Industrial Disputes Act claiming the wages as the respondent is not complying with the award. There are existence of the workman in the award as quoted by the respondent in his written statement and the witness of the respondent MW-2 who is dealing with the same business at Sarojini Nagar, New Delhi stated that the workman joined his service on 16th April, 1980 and worked upto 13th May, 1980, clearly shows that the claimant was in the service of the witness which was not rebutted by the workman and he was absent from duty of his own and not due the sickness of his wife. If his wife was sick then he should have got her treated at the ESI hospital under which he was covered and should have produced the certificate of the same which could not be disbelieved, which is not done by the claimant which shows the *mala fide* of the workman and the allegation of the respondent are true and the action is also correct. The claimant abandoned his service of his own so the issue is decided in favour of the respondent and against the workman.

Issue No. 2 :

On this issue representative of the management argued that there were 9 or 10 workmen worked with the respondent and there were losses due to the unrest of the workmen so they closed the work and send the closure information to the Labour Commissioner, Haryana, — *vide* Ex. M-8 and closed down the respondent factory and retrenched all the workmen working with them and how the premises have been given to other firm which is working there as stated by the respondent witness Shri F. C. Bhatia as MW-3.

The representative of the workman argued on this issue that the closure notice was not given to the workman which is necessary under the law. The factory was not closed as stated by the respondent on 7th September, 1980.

After hearing the arguments of both the parties on this issue I am of the view that when there is a registered letter addressed to the Labour Commissioner, Haryana, Chandigarh Ex. M-8 is on the file and the copies of the same were sent to the other authorities of the Labour Department and copy of the same was displayed on the notice-board which is very clear the intention of the respondent that they have closed the respondent factory on 7th September, 1980. So this issue is also decided in favour of the respondent and against the workman.

Issue No. 3

After deciding the preliminary issue in favour of the respondent there is no need to discuss the issue No. 3 as it is not a termination in a legal sense and rather it is an abandonment of his service of the workman of his own as decided in Issue No. 1 and after deciding this issue against the workman, the workman is not entitled for any relief.

No order as to costs. This be read in answer to this reference.

Dated the 9th April, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 839, dated the 19th April, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.